

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1003

AERO MAYFLOWER TRANSIT COMPANY,

Appellant,

vs.

**BOARD OF RAILROAD COMMISSIONERS OF THE
STATE OF MONTANA, ET AL.**

APPEAL FROM THE SUPREME COURT OF THE STATE OF MONTANA

**STATEMENT OPPOSING JURISDICTION AND
MOTION TO DISMISS OR AFFIRM**

R. V. BOTTOMLY,

Attorney General of Montana;

CLARENCE HANLEY,

Assistant Attorney General of Montana;

EDWIN S. BOOTH,

Special Assistant Attorney

General of Montana,

Counsel for Appellees.

INDEX

SUBJECT INDEX

	Page
Statement opposing jurisdiction and motion to dismiss or affirm	1
The judgment entered by the State District Court after decision of the Montana Supreme Court	2
The decision of the State Court that Sections 3847.16 and 3847.27 R.C.M. 1935, apply to the vehicles operated in Montana by an interstate carrier is a decision on the construction of state statutes	3
No substantial federal question is presented	6
Appendix—Applicable statutes	8

TABLE OF CASES CITED

<i>Aero Transit Co. v. Georgia Comm.</i> , 295 U. S. 285, 55 Sup. Ct. 709, 79 L. Ed. 1439	7, 8, 9, 10, 11
<i>Clark v. Paul Gray, Inc.</i> , 306 U. S. 583, 59 Sup. Ct. 744, 83 L. Ed. 1001	7, 11
<i>Clark v. Poor</i> , 274 U. S. 556, 47 Sup. Ct. 702, 71 L. Ed. 1199	7, 8, 9, 10
<i>Dixie Ohio Express Co. v. State Revenue Commission</i> , 306 U. S. 72, 59 Sup. Ct. 435, 83 L. Ed. 495	7, 8, 9, 10, 11
<i>Erie Railroad Co. v. Tompkins</i> , 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188	6
<i>Great Northern Railroad Co. v. Sunburst Oil and Refinery Co.</i> , 287 U. S. 387, 53 Sup. Ct. 145, 77 L. Ed. 360	6
<i>Hendrick v. Maryland</i> , 235 U. S. 610, 35 Sup. Ct. 140, 59 L. Ed. 385	7, 8, 9, 10
<i>Hicklen v. Coney</i> , 290 U. S. 169, 54 Sup. Ct. 142, 78 L. Ed. 247	6
<i>Huddleston, et al. v. Dwyer</i> , 322 U. S. 232, 64 Sup. Ct. 1015, 88 L. Ed. 1246	6

	Page
<i>Interstate Transit, Inc. v. Lindsey</i> , 283 U. S. 183, 51 S. Ct. 380, 75 L. Ed. 953	7
<i>Kane v. New Jersey</i> , 242 U. S. 160, 37 Sup. Ct. 30, 61 L. Ed. 222	7, 8, 9, 10, 11
<i>Morf v. Bingaman</i> , 298 U. S. 407, 56 Sup. Ct. 756, 80 L. Ed. 1245	7, 8, 10, 11
<i>Silas Mason Co. v. Tax Commission</i> , 302 U. S. 186, 58 Sup. Ct. 233, 82 L. Ed. 187	6
<i>South Carolina Highway Dept. v. Barnwell Bros.</i> , 303 U. S. 188, 58 Sup. Ct. 510, 82 L. Ed. 734	10, 11
<i>Sprout v. South Bend</i> , 277 U. S. 169, 48 Sup. Ct. 562, 72 L. Ed. 836	10
<i>Travelers Ins. Co. v. Connecticut</i> , 185 U. S. 364, 22 Sup. Ct. 673, 46 L. Ed. 949	9
<i>Western Livestock v. Bureau of Revenue</i> , 303 U. S. 250, 58 Sup. Ct. 546, 82 L. Ed. 823	9

STATUTES CITED

Constitution of the United States:

Article I, Section 3

6

14th Amendment

6

Devised Codes of Montana, 1935:

Section 3847.16

2, 3, 4, 6, 7, 8, 9, 13

3847.17

8

3847.27

2, 3, 4, 5, 6, 7, 8, 9, 15

3847.28

8

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1003

AERO MAYFLOWER TRANSIT COMPANY,

A CORPORATION,

Defendant and Appellant,

vs.

BOARD OF RAILROAD COMMISSIONERS OF THE
STATE OF MONTANA, PAUL T. SMITH, LEONARD
C. YOUNG AND HORACE F. CASEY, AS MEMBERS OF
AND CONSTITUTING SAID BOARD OF RAILROAD COM-
MISSIONERS OF THE STATE OF MONTANA,

Plaintiff and Appellee

**STATEMENT BY APPELLEES OF GROUNDS IN OP-
POSITION TO APPELLATE JURISDICTION OF
ABOVE COURT, PURSUANT TO RULE 12, AND
MOTION TO DISMISS OR AFFIRM APPEAL.**

The appellees state the following matters and grounds against the jurisdiction of this court as asserted by the appellant herein, in its statement of the basis of appellate jurisdiction, filed herein on the 16th day of December, 1946, as required by Rule 12 of the Supreme Court.

For the reasons hereinafter stated, appellees herein, by their counsel, move this court to dismiss with costs the appeal taken herein to this court by Aero Mayflower Company, a corporation, upon the ground that the appeal does not present a substantial Federal question.

In the alternative, appellees move this court to affirm the judgment appealed from on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I

The Judgment Entered by the State District Court After Decision of the Montana Supreme Court

After the decision and order of the Supreme Court of Montana had become final by reason of the denial for rehearing on September 19th, 1946 (R. 157), the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, made and entered a judgment on the 28th day of October, 1946. This judgment purported to be in compliance with the decision and order of the Supreme Court, and provided that the appellant herein be restrained from operating its motor vehicles for hire on the public highways of Montana until it had paid the fees required to be paid by Sections 3847.16 and 3847.27, Revised Codes of Montana, 1935 (App. 13, 15) for the years of 1936, 1937, 1938 and 1939. Appellees herein believed that the decision of the Supreme Court of Montana entitled them to a judgment restraining appellant herein from operating in Montana until the fees due under each section of the statute for each year from 1936 until date of compliance are paid. A special proceeding was brought in the Supreme Court of Montana to compel the district court to enter a judgment in conformity with the decision and order of the Supreme Court of Montana. On December 19th,

1946, the Montana Supreme Court rendered its decision and order holding that appellees herein were entitled to a judgment restraining appellant from operating its vehicles on the public highways of the state of Montana until it makes report and pays the fees required by sections 3847.16 and 3847.27, R.C.M. 1935 (App. 13, 15) for each year from 1936 to the date of compliance. This decision became final on December 30th, 1946. The judgment will, when rendered, be added to the record or substituted for that dated October 28th, 1946 (R. 159, 160).

This supplementary and special proceeding was for the purpose of enforcing the final decision and order of the Supreme Court of Montana (R. 130 and following). It is not otherwise involved in this appeal. Explanation of the facts were, however, considered essential to explain the appearance of a judgment in the record dated subsequently to the date of filing the appeal. The opinion and judgment of the Supreme Court of Montana which became final on September 19th, 1946, was and is the final judgment. The lower state court had nothing further to do than carry out that judgment.

II

The Decision of the State Court That Sections 3847.16 and 3847.27, R.C.M. 1935, Apply to the Vehicles Operated in Montana by an Interstate Carrier Is a Decision on the Construction of State Statutes.

There is no dispute as to the facts in this case. The appellant is a motor carrier engaged in interstate commerce. Its business in Montana is transportation of property for hire, into, out of or through the State of Montana, in interstate commerce. The sole Federal question presented is whether, as to an interstate carrier, the provisions of Section 3847.16 and 3847.27, R.C.M., 1935 (App. 13, 15),

or either of them, violate the commerce clause, or the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

The opinion of the Supreme Court of Montana, decided that: (1) Section 3847.16 R.C.M. 1935 (App. 13), is applicable to interstate carriers (R. 135-142, Appellant's statement, App. A, Page 31-38), (2) section 3847.27 R.C.M. 1935 (App. 15) is applicable to interstate carriers (R. 142-144, appellant's statement App. A Page 38-40), the term "gross operating revenues of such carrier" used in section 3847.27 R.C.M. 1935 means "gross operating revenues derived from operations in Montana" and not "gross revenues from all sources" (R. 145, Appellant's statement App. A Page 40), and (4) section 3847.27, R.C.M. 1935 is not defective by reason of the failure to specify a method by which gross operating revenue in Montana may be determined for any year (R. 144-146, Appellant's statement App. A Page 39-41). Appellant assigns as error the decision of the Montana Court on each of these points.

The sections of the Montana statute involved are set forth in the appendix.

Appellant contends that section 3847.27 does not contain any rule whereby the gross operating revenue for any year in Montana may be determined, and that a federal question is therefore in issue. The record discloses that, for each year where figures are available as to the operation of appellant in Montana, the gross revenue is far below the figure necessary to equal the minimum fee prescribed (R. 18, 19, 20, 81, 82, 85, 86). On the basis of these facts the court was justified in its statement.

"Even if it be admitted that the manner of arriving at a sound basis upon which the tax or gross revenue is not provided by the statute, a contention to which we do not agree, no difficulty would arise in putting into effect the minimum fee of \$15.00 required for each

company vehicle operated within the state" (R. 146, Appellant's statement App. A Page 40).

This statement does not constitute a declaration that the gross revenue in Montana cannot be determined. Rather it is a factual statement that in this particular case no difficulty would arise in applying the minimum fee prescribed. The court then announced the rule that where a duty is placed on a Board but the statute fails to detail the mode of enforcement, any fair and reasonable mode of enforcement may be adopted by the Board (R. 146 Appellant's statement App. A Page 41).

Appellant contends that this statement is unfounded in law and exceeds the power of the Board in supplying necessary elements omitted by the Legislature. The statement of the Montana Court does not attempt to add anything to the statute. No element necessary to determine gross revenue is lacking.

The only possible point of uncertainty in the statute was as to whether the gross revenue intended in section 3847.27 R.C.M. was that on operations in Montana or total operations. The Montana Court has removed that uncertainty and decided that the gross revenue intended is only that on operations in Montana (R. 145, Appellant's statement App. A Page 40). The term "gross revenue" is certain, it means all revenue received without deduction. Given the routings of the shipments, a mileage guide, the weight and contents of the shipment, and the tariffs or contract, any auditor, company, court or board could determine the gross revenue from the operation in Montana. No other standard, method, formula or principle is necessary to determine "gross revenue from operations in Montana." In the event the gross revenue is not in sufficient amount so that the tax equals \$15.00 per vehicle per year, then the minimum prescribed would apply.

In so far as the points mentioned above are concerned, the only question involved is one of state statutory construction. No Federal question is involved and the decision of the Montana Supreme Court is final.

Hicklen v. Coney, 290 U. S. 169, 54 Sup. Ct. 142, 78 L. Ed. 247;

Great Northern Railroad Co. v. Sunburst Oil and Refinery Co., 287 U. S. 387, 53 Sup. Ct. 145, 77 L. Ed. 360;

Silas Mason Co. v. Tax Commission; 302 U. S. 186, 58 Sup. Ct. 233, 82 L. Ed. 187;

Erie Railroad Co. v. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188;

Huddleston et al. v. Dwyer, 322 U. S. 232, 64 Sup. Ct. 1015, 88 L. Ed. 1246.

III

No Substantial Federal Question Is Presented

Appellant contends that the application of the provisions of sections 3847.16 and 3847.27 R.C.M., 1935 to an interstate carrier is in violation of commerce clause (Art. 1, Sec. 8, Clause 3) and the equal protection and due process clause of the Fourteenth Amendment (14th Amend. Sec. 1) of the Constitution of the United States. Error is assigned because the Supreme Court of Montana did not so hold.

Federal questions are involved in these contentions and assignments of error. It is appellees' position, however, that each of the federal questions has been decided and determined by the Supreme Court of the United States and is so well settled as to no longer present a substantial federal question. The authorities believed to establish appellees' position on the various points are set forth below.

Section 3847.16 R.C.M. 1935, (App. 13) prescribes a fee of \$10.00 per vehicle per year for each vehicle operated on the public highways of Montana by a motor carrier. This fee is "in consideration of the use of the public highways of this state." Section 3847.27 R.C.M. 1935 (App. 16), prescribes a fee of $\frac{1}{2}$ of 1 percent of the gross revenue from operations in Montana (R. 145), subject to a minimum fee of \$15.00 per year per vehicle for each vehicle operated on the highways of Montana. This fee is "in consideration of the use of the highways of the state."

It is well settled that a state may impose upon vehicles used exclusively for interstate transportation a fair and reasonable tax for the privilege of using its highways for that purpose. Such a tax is not inconsistent with the commerce clause of the Constitution of the United States.

Hendrick v. Maryland, 235 U. S. 610, 35 Sup. Ct. 140, 59 L. Ed. 385;

Kane v. New Jersey, 242 U. S. 160, 37 Sup. Ct. 30, 61 L. Ed. 222;

Clark v. Poor, 274 U. S. 556, 47 Sup. Ct. 702, 71 L. Ed. 1199;

Interstate Transit, Inc. v. Lindsey, 283 U. S. 183, 51 Sup. Ct. 380, 75 L. Ed. 953;

Aero Transit Co. v. Georgia Comm., 295 U. S. 285, 55 Sup. Ct. 709, 79 L. Ed. 1439;

Morf v. Bingaman, 298 U. S. 407, 56 Sup. Ct. 756, 80 L. Ed. 1245;

Dixie Ohio Express Co. v. State Revenue Commission, 306 U. S. 72, 59 Sup. Ct. 435, 83 L. Ed. 495;

Clark v. Paul Gray, Inc., 306 U. S. 583, 59 Sup. Ct. 744, 83 L. Ed. 1001.

It affirmatively appears that the fees prescribed by both sections, 3847.16 and 3847.27 R.C.M. 1935 (App. 13, 15) are

"in consideration of the use of the highways of this state." This is a legislative declaration of purpose which is sufficient to show that the fees are exacted as compensation for use. As pointed out by Appellant in his statement as to jurisdiction sections 3847.17 and 3847.28 R.C.M. 1935 originally allocated the fees received under 3847.16 and 3847.27 R.C.M., 1935 to administration of the Montana Motor Carrier Act. The fact that none of the fees may actually be devoted to highway maintenance or construction is immaterial and is no concern of appellant.

Clark v. Poor, 274 U. S. 554, 47 Sup. Ct. 702, 71 L. Ed. 1199;

Morf v. Bingaman, 298 U. S. 407, 56 Sup. Ct. 756, 80 L. Ed. 1245;

Dixie Ohio Express Company v. State Revenue Comm., 306 U. S. 72, 59 Sup. Ct. 435, 83 L. Ed. 495.

The fee prescribed in section 3847.16 R.C.M. 1935 (App. 13) is payable annually before the vehicle of the carrier may legally operate on the highways of Montana. It is a tax on the privilege of using the highways, without limitation as to mileage, and is not a forbidden burden on interstate commerce.

Hendrick v. Maryland, 235 U. S. 610, 35 Sup. Ct. 140, 59 L. Ed. 385;

Kane v. New Jersey, 242 U. S. 160, 37 Sup. Ct. 30, 61 L. Ed. 222;

Aero Transit Co. v. Georgia Comm., 295 U. S. 285, 55 Sup. Ct. 709, 79 L. Ed. 1439;

Morf v. Bingaman, 298 U. S. 407, 56 Sup. Ct. 756, 80 L. Ed. 1245.

The fee prescribed by section 3847.27 R.C.M. 1935 (App. 15), is payable after the business has been done, and is

based directly on the gross revenue received from operations on Montana highways. Thus the fee is directly connected with the amount of revenue use made of the highways. The fact that a minimum fee is prescribed is not inconsistent with the stated purpose of the act to obtain compensation for the use of the highways. The nature of the fee shows clearly that it is related to the amount of use made of the highways by the carrier's vehicles.

The fees prescribed by section 3847.16 and 3847.27 apply in the same manner and to the same extent to intrastate, interstate or interstate and intrastate motor carriers for hire. They are only applicable to vehicles operated on Montana Highways, and on gross revenue derived from operations in Montana. Neither statute discriminates against the interstate carriers. Nothing in either section shows hostility to interstate commerce. Neither section violates the commerce clause or the 14th Amendment.

Travelers Ins. Co. v. Connecticut, 185 U. S. 364, 22 Sup. Ct. 673, 46 L. Ed. 949;

Hendrick v. Maryland, 235 U. S. 76, 35 Sup. Ct. 140, 59 L. Ed. 385;

Kane v. New Jersey, 242 U. S. 160, 37 Sup. Ct. 30, 61 L. Ed. 222;

Clark v. Poor, 274 U. S. 556, 47 Sup. Ct. 702, 71 L. Ed. 1199;

Aero Transit Co. v. Georgia Comm., 295 U. S. 183, 55 Sup. Ct. 709, 79 L. Ed. 1439;

Western Livestock v. Bureau of Revenue, 303 U. S. 250, 58 Sup. Ct. 546, 82 L. Ed. 823;

Dixie Ohio Express Co. v. State Revenue Comm., 306 U. S. 72, 59 Sup. Ct. 435, 83 L. Ed. 495.

The tax is for a proper purpose and does not discriminate against the interstate carrier. The tax is not unreasonable

in amount so as to prohibit interstate commerce. The amount of the charges and the method of collection are primarily for determination of the state itself. The fees imposed by both sections, separately or considered together, are reasonable and are fixed according to a uniform, fair and practical standard. Neither fee constitutes a forbidden burden on interstate commerce.

Kane v. New Jersey, 242 U. S. 160, 37 Sup. Ct. 30, 61 L. Ed. 222;

Clark v. Poor, 274 U. S. 556, 47 Sup. Ct. 702, 71 L. Ed. 1199;

Sprout v. South Bend, 277 U. S. 169, 48 Sup. Ct. 562, 72 L. Ed. 836;

Aero Transit Co. v. Georgia Comm., 295 U. S. 285, 55 Sup. Ct. 709, 79 L. Ed. 1439;

Morf v. Bingaman, 298 U. S. 407, 56 Sup. Ct. 756, 80 L. Ed. 1245;

South Carolina Highway Dept. v. Barnwell Bros., 303 U. S. 188, 58 Sup. Ct. 510, 82 L. Ed. 734;

Dixie Ohio Express Co. v. State Revenue Comm., 306 U. S. 72, 59 Sup. Ct. 435, 83 L. Ed. 495.

There is no showing in the record that either fee prescribed is unreasonable in amount. The burden of proof of unreasonableness would be on the appellant and no such showing has been made.

Hendrick v. Maryland, 235 U. S. 610, 35 Sup. Ct. 140, 59 L. Ed. 385;

Kane v. New Jersey, 242 U. S. 160, 37 Sup. Ct. 30, 61 L. Ed. 222;

Morf v. Bingaman, 298 U. S. 407, 56 Sup. Ct. 756, 80 L. Ed. 1245;

South Carolina Highway Dept. v. Barnwell Bros., 303 U. S. 188, 58 Sup. Ct. 510, 82 L. Ed. 734;

Dixie Ohio Express Co. v. State Revenue Comm., 306 U. S. —, 59 Sup. Ct. 435, 83 L. Ed. 495;

Clark v. Paul Gray, Inc., 306 U. S. 583, 59 Sup. Ct. 744, 82 L. Ed. 1001.

The fact that appellant might not employ his vehicles on Montana highways to the extent permitted by the payment of the fee prescribed in section 3847.16 R.C.M. 1935 or by the payment of the minimum fee prescribed in section 3847.27 R.C.M. 1935 does now show that the fees are unreasonable or discriminatory.

Kane v. New Jersey, 242 U. S. 160, 37 Sup. Ct. 30, 61 L. Ed. 222;

Aero Transit Co. v. Georgia Comm., 295 U. S. 285, 55 Sup. Ct. 709, 79 L. Ed. 1439;

Morf v. Bingaman, 298 U. S. 407, 56 Sup. Ct. 756, 80 L. Ed. 1245.

The numerous cases cited by appellant relating to occupation taxes, use taxes, or inspection taxes of railroads, express companies, pullman companies, telephone or telegraph companies or other utilities are not applicable to the questions here presented. In none of those cases is the fee involved compensation for use of a facility such as highways, owned constructed and maintained by the state as a place on which to conduct a business.

We respectfully submit that the decision of the Supreme Court of Montana as to matters of construction of state statutes is controlling, and that as to application of those statutes to interstate commerce, the decision of the Supreme Court of Montana is in harmony with the controlling deci-

sions of this court. The federal questions presented have been so firmly established and settled by decision of this court as to no longer be substantial federal questions. The motion to dismiss the appeal or, in the alternative, to affirm the decision appealed from should be granted.

Respectfully submitted,

R. V. BOTTOMLY,
*Attorney General of the
State of Montana;*

CLARENCE HANLEY,
*Asst. Attorney General of the
State of Montana;*

EDWIN S. BOOTH,
*Special Assistant Attorney General
and Secretary-Counsel, Board of
Railroad Commissioners of the
State of Montana.*

APPENDIX

Statutes

Section. 3847.16 Revised Codes of Montana, 1935; (being also section 16, Chapter 184, Laws of the Twenty Second Legislative Assembly of the State of Montana 1931)

ANNUAL FEE FOR MOTOR CARRIERS—FEE FOR SEASONAL OPERATORS—COMPLIANCE REQUIRED OF MOTOR CARRIERS OPERATING IN MORE THAN ONE STATE—REVOCATION OF CERTIFICATE FOR FAILURE TO PAY FEES—LIEN OF FEES AND CHARGES.

“(a) In addition to all of the licenses, fees or taxes imposed upon motor vehicles in this state, and in consideration of the use of the public highways of this state, every motor carrier, as defined in this act, shall, at the time of the issuance of a certificate and annually thereafter, on or between the first day of July and the fifteenth day of July, of each calendar year, pay to the board of railroad commissioners of the state of Montana the sum of ten dollars (\$10.00), for every motor vehicle operated by the carrier over or upon the public highways of this state.

Provided, that a motor carrier engaged in seasonal operations only, where its said operations do not extend continuously over a period of not to exceed six (6) months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half ($\frac{1}{2}$) of the compensation and fees herein provided and, provided further, that the compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The Board shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

(b) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor carriers shall comply with the provisions of this act relating to the payment of compensation and to the mak-

ing of annual or special reports or statements herein required, and shall show the total business performed within the limits of this state and such other information concerning its operation within this state as may be required by the board as fully and completely and in the same manner as herein required of motor carriers operating wholly within this state.

(c) Upon the failure of any motor carrier to pay such compensation, when due, the board may in its discretion revoke the carrier's certificate or privilege and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(d) All compensation, fees, or charges, imposed and accruing under the provisions of this act, shall be a lien upon all property of the motor carrier used in its operations under this act; said lien shall attach at the time the compensation, fees, or charges become due and payable, and shall have the effect of an execution duly levied on such property of the motor carrier and shall so remain until said compensation, fees, or charges are paid or the property sold for the payment thereof."

Section 3847.23 Revised Codes of Montana, 1935; (being also section 16, Chapter 184, Laws of the Twenty Second Legislative Assembly of the State of Montana 1931)

"APPLICATION OF ACT TO INTERSTATE CARRIERS AND MOTOR CARRIERS OPERATING IN NATIONAL PARKS. The terms and provisions of this act shall apply to commerce with foreign nations, and to commerce among the several states of this Union, insofar as such application may be permitted under the provisions of the constitution of the United States, treaties made thereunder and the acts of Congress; provided that it shall not be necessary for an interstate or international motor carrier, in order to obtain a permit as herein provided, to make any showing of public convenience and necessity, except as to the transportation of passengers and/or freight between points within this state, the power to regulate such operation being specifically reserved herein;

and provided further, the board is hereby authorized to exercise any additional power that may from time to time be conferred upon the state by any act of Congress, and provided further, that any motor carrier operating in and about any national park, whose rates and methods of accounting are controlled by contract with the United States, shall not be subject to any regulation by the commission in conflict with such contract or in conflict with any regulation by the United States made pursuant to such contract or made pursuant to an act of Congress of the United States."

Section 3847.24 Revised Codes of Montana, 1935; (being also section 16, Chapter 184, Laws of the Twenty-Second Legislative Assembly of the State of Montana 1931)

"INVALIDITY OF PART OF ACT NOT TO AFFECT REMAINDER. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional."

Section 3847.27 Revised Codes of Montana, 1935; (being also section 2, Chapter 108, Laws of the Twenty-Fourth Legislative Assembly of the State of Montana 1935)

"ADDITIONAL FEES CONCERNING MOTOR CARRIERS. In addition to all other licenses, fees and taxes imposed upon motor vehicles in this state and in consideration of the use of the highways of this state, every motor carrier holding a certificate of public convenience and necessity issued by the public service commission, shall between the first and fifteenth days of January, April, July and October of each year, file with the public service commission a statement showing the gross operating revenue of such carrier for the preceding three months of operation, or portion thereof, and shall pay to the board a fee of one-half of one per cent of the amount of such gross operating revenue; provided,

however, that the minimum annual fee which shall be paid by each class A and class B carrier for each vehicle registered and/or operated under the provisions of the motor carrier act shall be thirty dollars (\$30.00) and the minimum annual fee which shall be paid by each class C carrier for each vehicle registered and/or operated under the motor carrier act shall be fifteen dollars (\$15.00)."

(9116)